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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT TACOMA

9 JOHN WORTHINGTON,

10 Plaintiff,

11 v.

12 LEON E. PANETTA, in His Official  
13 Capacity as Secretary of Defense for the  
14 United States Department of Defense, et  
15 al.,

Defendants.

CASE NO. C11-5916BHS

ORDER DENYING MOTIONS  
WITHOUT PREJUDICE

16 This matter comes before the Court on Defendants Jerry Kosierowski, Timothy J.  
17 Lowenberg, and Leon E. Panetta's ("Federal Defendants") motion to strike initial  
18 deadlines (Dkt. 12) and Plaintiff John Worthington's ("Worthington") motion to file  
19 administrative record (Dkt. 13). The Court has reviewed the briefs filed in support of and  
20 in opposition to the motions and the remainder of the file and hereby denies the motions  
21 without prejudice for the reasons stated herein.

22 **I. PROCEDURAL HISTORY**

23 On November 8, 2011, Worthington filed a complaint against the Federal  
24 Defendants, Christine Gregoire, and Robert M. McKenna. Dkt. 1. Worthington asserts  
25 three causes of action, two of which are judicial reviews of agency actions and the other  
26 being a declaratory judgment and injunction. *Id.*  
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1 On November 10, 2011, the Court issued an order regarding initial disclosures, a  
2 joint status report, and an initial discovery conference. Dkt. 4. The order set deadlines  
3 for each of these requirements. *Id.*

4 On January 24, 2012, the Federal Defendants filed a motion to strike the initial  
5 deadlines, disclosures, and conference. Dkt. 12. On February 2, 2012, Worthington  
6 responded and included a motion for an order requiring the Federal Defendants to file an  
7 administrative record on his first cause of action. Dkt. 13. On February 10, 2012, the  
8 Federal Defendants replied to their motion. Dkt. 15. On February 13, 2012, the Federal  
9 Defendants responded to Worthington's motion. Dkt. 16. On February 17, 2012,  
10 Worthington replied to his motion. Dkt. 17.

## 11 **II. DISCUSSION**

12 In their response to Worthington's motion, the Federal Defendants contend that  
13 Worthington's first cause of action is jurisdictionally deficient. Dkt. 16 at 6-11.  
14 Worthington counters that he consents to the Court dismissing his motion without  
15 prejudice so that the Federal Defendants can present their jurisdictional arguments in a  
16 properly briefed dispositive motion. The Court agrees with Worthington's proposal.  
17 Therefore, the Court denies without prejudice Worthington's motion.

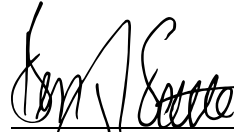
18 With regard to the Federal Defendants' motion, the Court will strike the initial  
19 deadlines pending a dispositive motion. The Federal Defendants must file a dispositive  
20 motion no later than March 22, 2012 or seek an extension from the Court. After ruling on  
21 the dispositive issues, the Court will address the need for discovery in this action. The  
22 Court is not persuaded at this time that Rule 26 is inapplicable to this proceeding.  
23 Therefore, the Court also denies without prejudice the Federal Defendants' motion.

## 24 **III. ORDER**

25 Therefore, it is hereby **ORDERED** that Federal Defendants' motion to strike  
26 initial deadlines (Dkt. 12) and Worthington's motion to file administrative record (Dkt.  
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1 13) are **DENIED without prejudice**. The Federal Defendants must file a dispositive  
2 motion no later than March 22, 2012.

3 DATED this 6th day of March, 2012.

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6 BENJAMIN H. SETTLE  
7 United States District Judge  
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